

**TRAPPERS CROSSING AT CRESTED BUTTE ASSOCIATION
ANNUAL MEETING OF OWNERS
AUGUST 1, 2020 – 4:00 P.M.
VIA ZOOM**

Present:

- Jeffrey Rohring
- Jim and Eileen Utley
- James Nowotny
- John and Debbie Montford
- Tom Atkinson
- Lynn McDermand
- Wayne and Leslie Collins
- Jim Hopkins
- Seth Novatt
- Richard and Diane Clark
- William & Marci Lacy
- Lynne and Charlie Stellberger
- Bob and Tina Bishop
- Jim Lobianco
- Tom Sisson and Patricia Osbaldiston
- Susan Jones
- Stuart Feeley
- Steve Tillory
- Scott Eaton
- Michael Smith
- Rob Harper, Toad Property Management
- Marcus Lock, Association's legal counsel

Proxy to Lynn McDermand:

- John Zander
- Bill Stamm
- Andrew Cassel
- Bill Earley
- Vanguard Atlantic
- Jeff Hermanson and Sherman Street Holdings LLC
- George Nelson
- Linda Sutej
- Win Craven
- Edmund Fitzgerald
- Jaz Colorado Real Estate Holdings LLC
- Milton Smith
- Terry Kelley
- Randall Raziano
- Walter Truettner
- Brian Humphry

Rob Harper called the meeting to order at 4:04 pm and said notice of the meeting had been mailed on July 15, 2020.

Lynn McDermand made a motion to approve the minutes of the August 3, 2019 meeting. Jim Hopkins seconded the motion and it was unanimously approved.

Rob Harper said the Forest Service had required significant upgrades to the Wildcat Bridge and the contractor had confirmed a start date of August 12, 2020. Rob explained the contractor did not anticipate significant delays to traffic and three or four weeks to complete the work. Rob said the Trappers Way sign had been received and would be installed in the next couple of weeks. Work would be started on the noxious weeds along the side of the road and small trees would be removed from the fire mitigation area completed a few years ago on Wildcat. Rob said repair work had been performed on the pipeline from Wildcat to the pond on Journey's End several times as animals were breaking the pipe.

Rob reminded owners to keep speed under 25 mph on all the Association roads. Seth Novatt said the water treatment trucks did not keep to the speed limit or obey the stop sign and Rob agreed to speak to the Town.

Marcus Lock of Law of the Rockies said the Association had been in contact with three owners for several years to secure vehicular access along Baby Head Hill and last year a lawsuit had been initiated. If the Court confirms that the scope of the utility easement permits it to be maintained to support vehicular access then Baby Head Hill would be able to be used in an emergency wildfire situation where Wildcat owners needed to evacuate homes. If the Association was successful at Court it would be necessary to do some work on the easement, removing a berm, some willows and shrubs but there was road base already in place. Marcus explained settlement negotiations were ongoing and trial was set for August 25, 26 and 27, 2020. Marcus said the two owners had requested clarification of any potential work on the utility easement and Lacy Construction and engineers, SGM, named as expert witnesses in the Case, would assist the Association in confirming the scope of work and cost. Marcus confirmed the easement would run from Wildcat Trail to the Bench, a steep trail, which would be accessible for SUVs and work would be kept to a minimum for emergency needs only. Marcus said the Association has not been able to identify any other feasible option for an emergency route in the event of wildfire.

Rob Harper said financials through May 2020 and the proposed Budget for 2020/2021 had been distributed prior to the meeting. Rob explained dues invoices had historically been mailed in August of each year for a fiscal year of June – May. Rob said the Association's governing documents stated a financial year of January – December and in an effort to comply with the governing documents and current Statute invoices would be mailed next week for 7 months (June – December) and in December 2020 a new Budget would be prepared to begin January 1, 2021 and dues invoices would be mailed at that time. The timing of future annual meetings would also be adjusted and would be discussed later in the meeting. Rob said the Board would also discuss changing to quarterly billing instead of annual billing. Rob said an average snow year had kept costs down and legal costs were significantly over budget due to the current litigation. Tom Atkinson made a motion to approve the 2020/2021 Budget as presented. Jim Hopkins seconded the motion and it was approved by a majority.

Marcus said Scenic Butte Partnership, LLC had requested a Covenant amendment to allow access and expand the Association to include 160 acres of land. A Written Ballot together with instructions and explanations had been sent out to all owners with the annual meeting documents and voting would end on August 14, 2020. Marcus explained the process and encouraged owners to respond with a yes or no vote. Marcus said they had not received any yes votes,

supporting the amendment, at this time and Marcus said the Board was not in favor of the proposal but it was a decision which required at least 67% support of the owners. Marcus said legal counsel for Scenic Butte, Montgomery Little Soran, had sent a letter dated July 28, 2020 and the letter was available to any interested owners and attached to these minutes as a permanent record. Marcus said \$20,000 for the easement had been offered and legal counsel for Scenic Butte had stated a private condemnation would be initiated if the Association did not allow access and inclusion of the 160 acre parcel. Marcus said a private condemnation was a very complicated process and Marcus shared a Case, The Glenelk Association v. Ronald P. Lewis, as an example of the standard Scenic Butte would need to meet at private condemnation. Marcus said the Crested Butte Land Trust owned land immediately adjacent to the 160 acre parcel and Marcus said he would encourage Scenic Butte to work with the Land Trust to have a plan which did not involve the complicated development proposal.

If Scenic Butte did proceed with litigation the Trappers Crossing insurance company would be notified and a claim filed.

Rob Harper said ballots had been submitted for the Board election with five owners volunteering for three seats on the Board. Rob confirmed the owners with the highest number of votes were Lynn McDermand, Tom Atkinson and Bob Bishop and the three were elected to the Board for three year terms. Rob thanked Jim Houstoun and Jim Hopkins for volunteering and thanked Jim Hopkins for his service on the Board.

Rob said the Board would discuss a date for the next annual meeting.

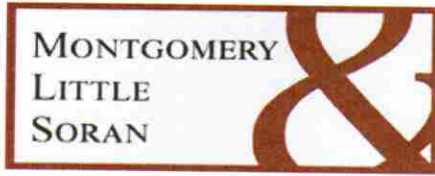
Jim Utley explained Trappers Crossing at Crested Butte owners paid for snow removal and road maintenance on a section of Peanut Lake Road and although the agreement might have made sense in the past it was not a fair agreement now as the Crested Butte Land Trust and the Crested Butte Nordic Council were benefiting and not contributing as well as some other owners of adjacent land. Rob said he had spoken with the County about taking over all maintenance of the road and Rob and Marcus said they would continue to review and attempt to come up with a solution.

Bob Bishop asked if there were options to improve internet speed and Rob Harper said he had spoken with CenturyLink in an attempt to have fiber optic installed as part of a federal grant to bring internet to rural areas. Jim Hopkins said Xstream from Gunnison was a good option if there was line of sight and transfer stations might be an option although it would be expensive and only serve a few lots in Wildcat.

Tina Bishop recommended owners contact the Colorado State Forest Service for fire mitigation on their lots and said the Colorado State Forest Service were offering very good cost sharing grants.

At 5:15 pm Tom Atkinson made a motion to adjourn the meeting. Lynn McDermand seconded the motion and it was unanimously approved.

Prepared by Rob Harper,
Toad Property Management, Manager



NATHAN G. OSBORN, ESQ.
DIRECT 303.779.2727
NOSBORN@MONTGOMERYLITTLE.COM

July 29, 2020

Via email to mlock@lawoftherockies.com

Mr. Marcus Lock
Law Of The Rockies
525 N. Main Street
Gunnison, Colorado 81230

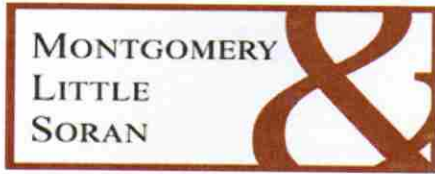
RE: Scenic Butte Partnership, LLC (“Scenic Butte”)

Dear Mr. Lock:

It has come to our attention that at the upcoming Trapper’s Crossing Annual Meeting the possible amendment of the Covenants to permit Scenic Butte to become part of the association and access the land via Trappers Way is up for consideration. My client asks as a member of the HOA that this letter be read or be submitted in the HOA minutes as part of the meeting. Please keep us advised of the outcome of the meeting and let us know if your client’s position has changed. As we have stated, my client has for years and is interested in resolving this matter in an amicable way but we have not heard from you since our last correspondence dated June 29, 2020 and plan to move forward with a condemnation action.

Scenic Butte provided a final offer letter pursuant to C.R.S. § 38-1-121 on May 29, 2020 and has yet to hear the status of your client’s consideration regarding the fair market value of the subject easement. My client has submitted a generous offer which he feels is fair and has made several attempts at good faith negotiations for the acquisition of property interest. However, should the members of the home owners association feel they would like an appraisal conducted by a person of their choosing, my client would agree to pay for reasonable expenses for the appraisal provided the property appraises for \$5,000.00 or more and it is consistent with the requirements set forth in C.R.S § 38-1-121.

Otherwise, my client will assume that your silence regarding our final offer within the timeframe designated is a rejection of the offer and that further negotiations would be futile. *Bd. of County of Comm'rs v. Blosser*, 844 P.2d 1237, 1239 (Colo.App.1992) (The good faith negotiations requirement for a condemnation action is met, and a condemnation action may commence, where the property owner remains silent or rejects the offer without making an



NATHAN G. OSBORN, ESQ.
DIRECT 303.779.2727
NOSBORN@MONTGOMERYLITTLE.COM

acceptable counteroffer, and the condemning authority establishes that negotiations with the landowners would have been futile.) I think it is very important that the HOA membership be advised that landlocked property owners have a constitutional right under the Colorado Constitution to acquire access through the condemnation action.

We look forward to hearing from you regarding the outcome of the meeting.

Sincerely,

s/ Nathan G. Osborn

NGO/cs
cc: Clifton Jones

Opinions of the Colorado Supreme Court are available to the public and can be accessed through the Court's homepage at <http://www.courts.state.co.us>
Opinions are also posted on the Colorado Bar Association homepage at www.cobar.org

ADVANCE SHEET HEADNOTE
September 12, 2011

No. 10SC275, The Glenelk Ass'n, Inc. v. Ronald P. Lewis - Colo. Const. Art. II, Section 14 - Section 38-1-1-2 (C.R.S. 2010) - Private Way of Necessity - Private Condemnation - Purpose - Indispensability - Trial Court Findings of Fact - Scope Of and Necessity For Way of Necessity - Burden on Condemnee's Property

In this case, the District Court for Jefferson County dismissed a condemnation petition for a private way of necessity because the developer of the allegedly landlocked parcel did not sufficiently define the scope of and necessity for the proposed condemnation. Evidence showed that the development might vary from one to thirty residential dwellings. Applicable roadway and easement requirements in Jefferson County mountain areas vary depending on how many lots will be served by the development.

The district court found that developer's failure to sufficiently define the purpose of the way of necessity prevented the court from entering a condemnation order that would minimize the burden to be placed upon condemnee's property. The court of appeals ruled that the condemnation

could proceed based only upon the zoning of the condemnor's property.

The supreme court disagrees with the court of appeals and reinstates the district court's judgment. The supreme court holds that, when a petitioner seeks to condemn a private way of necessity for access to property it wishes to develop in the future, it must demonstrate a purpose for the condemnation that enables the trial court to examine both the scope of and necessity for the proposed condemnation, so that the burden to be imposed upon the condemnee's property may be ascertained and circumscribed through the trial court's condemnation order. The record in this case supports the trial court's dismissal of the condemnation petition.